IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 508 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHWINBHAI BABUBHAI RATHOD

Versus

B S JEBALIYA DEPUTY POLICE COMMISSIONER

Appearance:

1. Special Criminal Application No. 508 of 2001

MR RG CHHARA for Petitioner No. 1

MR K.T. DAVE, ADDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 05/10/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constituion, petitioner has challenged the order dated April 11, 2001 at Annexure "B" to the petition, passed by

the externing authority i.e. Deputy Commissioner of Police, Zone VI, Ahmedabad City, by which he has externed the petitioner for a period of two years from five districts i.e. Ahmedabad City, Ahmedabad Rural, Gandhinagar, Kheda and Mehsana and also the order dated June 20, 2001 at Annexure "C", passed by the appellate authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

2. A show cause notice dated September 30, 2000 at Annexure "A" to the petition was issued to the petitioner under Section 59 of the Bombay Police Act ("the Act" for short), in which several allegations were made against him to the effect that he was compelling the innocent people and drivers to give him money and if they oppose, he was threatening them by showing knife and giving threat to kill them. It is alleged that the petitioner was extorting money from traders and vendors. Besides this, three cases were also registered against him. Therefore, by issuing the show cause notice the petitioner was called upon to show cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgement.

3. The externing authority after considering the material on record passed the impugned order of externment dated April 4, 2001, in exercise of the powers conferred under Section 56(b) of the Act, by externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred an appeal before the appellate authority under Sec. 60 of the Act, which was dismissed by the appellate authority vide order dated June 20, 2001, which has given rise to the present petition.

5. Mr. Chhara, learned Counsel for the petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. He also contended that there is a delay of 7 months in passing the order of externment from the date of issuance of the notice and this delay is not explained by the externment authority. He further contended that neither in the order, nor by filing reply-affidavit the delay is explained and therefore on this sole ground both the orders require to be set aside.

6. Shri K.T Dave, learned APP does not dispute the fact that the order of externment is passed after a period of about 6 months after issuance of the notice. He therefore urged to pass appropriate order in view of the settled law enunciated by this Court on un-explained delay.

7. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the order passed by the externing authority and the order passed by the appellate authority and other papers annexed to the petition.

8. On perusal of the relevant papers annexed with the petition, it is seen that the show cause notice calling upon the petitioner as to why he should not be externed on the ground stated in the show cause notice was issued on Sept. 30, 2000, whereas order of externment came to be passed on April 11, 2001. Therefore, it can be said that the order was passed after a period of more than 6 months. It is nowhere explained by the externing authority why there is a delay of about seven months in passing the said order. The delay has not been explained, which renders the impugned orders invalid.

9. In the case of Santosh Ramprasad Sharma Vs. Deputy Commissioner of Police, reported in 1992 (2) GLH 457, a Division Bench of this Court has held that when there is a delay in passing the order of externment from the date of issuance of notice which is not explained, the benefit should go to the externee and on this ground externment order was quashed. The ratio laid down in the said decision is squarely applicable to the present case. Admittedly, the show cause notice was issued on September 30, 2000, whereas the order of externment was passed on April 11, 2001 and therefore, there is a delay of more than 7 months, which is not explained and therefore on this sole ground the order of externment deserves to be quashed and set aside.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of externment dated April 11, 2001 at Annexure "B" and order dated June 20, 2001 at Annexure "C" passed by the appellate authority both are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)

*/Mohandas